

approved
4/5/22

ZONING BOARD OF APPEALS

Meeting Minutes of March 22, 2022

@ 7:00 p.m.

CARVER TOWN HALL

MEETING ROOM #4

Present: Stephen G. Gray, Chairman; Sharon Clarke, Vice Chairperson; Members: Frances Mello (via Zoom) and Mark Poirier. Alternate Member, James Barrington, was also in attendance.

Absent: Frank Casey

Meeting opened at 7:05 P.M.

A. Approval of Minutes:

Approval of meeting Minutes of February 23, 2022. Member Barrington made a Motion to accept the minutes as written and Vice Chairperson Clarke seconded the Motion. The Motion passed unanimously.

At this juncture, Chairman Gray stated that Member Fran Mello was attending the meeting via Zoom. The Members of the Board each acknowledged that they could hear her and see her, and vice versa.

Vice Chairperson Clarke made a Motion to agree to have Member Mello attend the meeting remotely and the Motion was seconded by Member Poirier. The Motion passed unanimously.

At this juncture, Chairman Gray decided he would begin by calling cases from the Agenda out of order, so as to expedite matters.

E. Public Hearing: Case 100-6-OR: Petitioner: Wenham PV I, LLC requesting dimensional Variances pursuant to Sections 2320 and 5222 of the Carver Zoning By-law for property located at 27 Wenham Road in Carver, MA (Assessor's Map 100, Lot 6 OR) so as to construct a "dual-use" solar project in the Residential Agricultural District. Variances are being requested due to the irregular shape of the parcel and the need for frontage relief (the subject lot has 105 feet of frontage; minimum requirement is 150 feet). This Case is continued to May 3, 2022.

Continued Public Hearings:

C. Public Hearing: Case 1-20-OR: Petitioner: Richard Antoniotti requesting a Special Permit pursuant to Sections 5221 and 5300 et. seq. of the Carver Zoning By-law, for property located at 92-B South Main Street in Carver, MA (Assessors Map 1 Lot 20-0-R), to modify and extend two pre-existing, non-conforming structures on a lot and to make each existing building a two-bedroom structure in a Residential-Agricultural District.

Chairman Gray stated that the Petitioner, Richard Antoniotti, has requested in writing a continuance from the Board.

Vice Chairperson Clarke made a Motion to accept the request for a continuance from Mr. Antoniotti and the Motion was seconded by Member Barrington. The Motion passed unanimously.

Vice Chairperson Clarke made a Motion to continue Case 1-20-0R to May 3, 2022 and was seconded by Member Poirier. The Motion passed unanimously.

D. Public Hearing: Case 82-1-1R: Petitioner: Keith and Carol Howes requesting a Special Permit pursuant to Section 2245c, 5221, and 5300 et. seq. of the Carver Zoning By-law, for property located at 223 Meadow Street in Carver, MA (Assessors Map 82 Lot 1-1-R), so as to construct a 30 x 60 (1800 square feet) detached garage (maximum allowed is 700 square feet) in a Residential Agricultural District.

Chairman Gray opened the Public Hearing and reviewed the case to date.

Vice Chairperson Clarke advised the Board that she was not sitting on this case and recused herself.

Chairman Gray asked Ms. Howes if she wanted to continue the Hearing with only four voting Members present, as all four members would need to vote in the affirmative for the Special Permit to be granted.

The Petitioner stated she was prepared to proceed.

The Petitioner referred to drawings the Board had received on February 23, 2022 and stated that these had not changed in the interim and that the total square footage of the proposed project had been downsized to 28 x 50, or 1400 square feet. There would be no second floor. The Petitioner also remarked that there would be no water in the proposed garage.

No opposition was received from any member of the public.

Member Poirier made a Motion to close the Public Hearing and was seconded by Member Mello. The Motion passed unanimously.

Findings:

Member Barrington made a Motion for the Board to accept the following finding and was seconded by Member Poirier:

“The Board finds that it may award a Special Permit, as the benefits of the proposed use outweigh the detrimental impacts on the Town and the neighborhood, in view of the particular characteristics of the site, and the proposal in relation to that site.”

The Motion passed unanimously.

Decision:

Member Barrington made a Motion to grant the Special Permit pursuant to its authority under Sections 5221 and 5300 et. seq. of the Town of Carver By-law. The Motion was seconded by Vice Chairperson Clarke. The Motion passed unanimously.

Conditions on the Decision were voted as follows:

1. There will be no plumbing installed in the proposed garage.
2. Subject to the Plans and drawings of record reflecting a 1400 square foot structure and no second floor.

B. Public Hearing: Case 32-1-A, 1-1, 1-2, 1-3, 1-4, 1-5 1-6: Petitioner: Margaret Sheehan on behalf of Save the Pine Barrens, Inc. appealing the denial of the Building Commissioner for enforcement of the Town of Carver Zoning By-laws with regard to earth removal activities on land owned by Rickets Pond Business Trust, said activities allegedly occurring at property located on Spring Street/Rte. 44, Carver MA (Assessors Map 32, Lots 1-A, 1-1, 1-2, 1-3, 1-4, 1-5 and 1-6), in the Spring Street Innovation District, pursuant to M.G.L. c 40A, Sections 8 and 15, as well as under Sections 2230 and 5223 of the Carver Zoning By-law.

Chairman Gray opened the Public Hearing, Case 32-1-A, 1-1, 1-2, 1-3, 1-4, 1-5, and 1-6.

The representative of the Petitioner, Donna Brewer, Esq., appeared before the Board requesting enforcement of Town of Carver Zoning By-law 2230 ("Use Regulation Schedule") to stop commercial earth removal activities in the Spring Street Innovation District ("hereinafter SSID") in which the subject lots are located.

Attorney Brewer remarked that the Petitioner was aggrieved by reason of its inability to obtain enforcement action from the Building Commissioner, who is also the Zoning Enforcement Officer for the Town of Carver (see email of Building Commissioner, Paul Boucher, dated December 30, 2021).

The subject lots were said to consist of environmentally sensitive and endangered pine barrens terrain that needs to be conserved.

The Board discussed with the representative of the Petitioner that it identified possible jurisdictional issues concerning this Case. Specifically, the Board observed that perhaps the By-law enforcement being requested related to a Town of Carver General By-law, to wit: General By-laws, Earth Removal, Chapter 9.1 and sections following and not the Zoning By-laws. Under Chapter 9.1.9 c, "the Enforcement Officer for the provisions of this By-law shall be the E.R.C. (Earth Removal Committee) or their designee of the Town of Carver" (and not the Zoning Enforcement Officer who is the Zoning Enforcement Officer for the Town of Carver).

Member Barrington asked if the Petitioner was aware if the Planning Board had issued a Special Permit for the commercial development of the lots in question.

Attorney Brewer stated that it had not. She proceeded to explain that one of the reasons expressed by the Building Commissioner for the denial of enforcement action in this instance was that the Planning Board had already issued a Special Permit for commercial development at the site. However, she maintained that the Planning Board had only approved a Definitive Subdivision Plan, which is not a Special Permit.

Attorney Brewer did acknowledge that a letter had been sent to the Earth Removal Committee the day before, on March 21, 2022, putting it on notice of the concerns of the Petitioner that those entities responsible for the alleged commercial earth removal activities at the subject property had exceeded the scope of the Permit issued by it in July 2018.

However, Attorney Brewer argued that earth removal in the SSID was a zoning enforcement issue. She drew the attention of the Board to the "Use Regulation Schedule" of the Zoning By-laws, Section 2230, which states that earth removal is prohibited in the SSID, and thereby distinguished this Case from a previous Decision of the Board in Case 131-2 (commercial earth removal activities alleged in a Residential-Agricultural Zoning District in which such activities are allowed by right under Section 2230 with approval from the E.R.C. under the General By-laws).

The Board also discussed whether the Petitioner had standing to proceed with this Case. When asked if individualized harm was present, Attorney Brewer stated that the abutters were suffering from harm. However, when the public audience was asked if any of them were abutters, no one raised their hand.

It was also claimed that the Petitioner, Save the Pine Barrens, Inc., represented the abutters without any proof of this being offered.

A few questions and comments were received from members of the public.

The Board then voted unanimously to continue the Case to the date of May 10, 2022 and indicated that it would be seeking opinion from Town Counsel in the interim. Attorney Brewer was invited to submit questions through the Chairman that she believed were pertinent to the issues raised by this Case.

Correspondence: None.

Member Poirier made a Motion to adjourn and was seconded by Vice Chairperson Clarke. The Motion passed unanimously.

Upcoming Zoning Board of Appeals Meetings:

Tuesday, April 5, 2022

Tuesday, May 3, 2022

Tuesday, May 10, 2022

Respectfully,

Patricia A. Pacella
Recording Secretary